IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

OP.No. 23020 of 1999(M)

PETITIONER:

THE KARIMTHARUVI TEA ESTATES LIMITED,
MALANKARA BUILDINGS, KODIMATHA,
KOTTAYAM - 686 001, REPRESENTED BY
ITS MANAGING DIRECTOR, SHRI. J.K. THOMAS.

BY ADV. SRI.JOSEPH MARKOSE,
ADV. SRI.A.KUMAR.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
SECRETARY TO GOVERNMENT,
POWER DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. **KERALA STATE ELECTRICITY BOARD,**
REPRESENTED BY ITS SECRETARY,
VYDYUTHI BHAVAN, PATTOM,
TRIVANDRUM.

3. **SPECIAL OFFICER (REVENUE),**
KERALA STATE ELECTRICITY BOARD,
VIDYUTHI BHAVAN, PATTOM,
TRIVANDRUM.

4. **DIRECTOR OF INDUSTRIES & COMMERCE,**
VIKAS BHAVAN, TRIVANDRUM.

BY GOVT. PLEADER SRI. P.N. SANTHOSH FOR R1,
ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB FOR R2 TO R4.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 38271/1999 IN O.P. NO. 23020/1999-M

DISMISSED

22/10/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER G.O. (MS) 4/92/PD DTD. 06/02/92 DTD. 06/02/92.

EXT.P.2: COPY OF THE APPLICATION DTD. 07/10/97 FILED BY THE PETITIONER BEFORE THE R.4.

EXT.P.3: COPY OF THE CERTIFICATE DTD. 15/10/97 ISSUED BY THE R.4.

EXT.P.4: COPY OF THE LETTER DTD. 27/04/98 TO THE R.4. BY THE PETITIONER.

EXT.P.5: COPY OF THE LETTER DTD. 30/11/98 BY THE R.3.

EXT.P.6: COPY OF THE LETTER DTD. 03/02/99 BY THE PETITIONER TO THE R.4.

EXT.P.7: COPY OF THE LETTER DTD. 15/02/99 BY THE PETITIONER TO THE R.2.

EXT.P.8: COPY OF THE LETTER DTD. 28/04/99 BY THE PETITIONER BY THE R.3.

EXT.P.9: COPY OF THE BOARD ORDER NO. 784/1999 (PLG. COM.3443/97) DTD. 05/04/99.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.23020 OF 1999

Dated this the 22nd day of October, 2007

JUDGMENT

By Ext.P1 Government Order, certain concessions were made available to the units, which may have started commercial production or set up their own captive power units, as the case may be, between 23.9.1991 and 31.12.1991. Such benefit was also extended to existing units for substantial expansion/ modernisation/diversification in terms of clause 1 (iii) of that Government Order. The petitioner's entitlement for such concession is certified by the Director of Industries & Commerce as per Ext.P3. The petitioner had applied for such certification as per Ext.P2 dated 7.10.1997. Ext.P3 shows, among other things, the date of energisation of the premises, date of commencement of commercial production after expansion and as to the scheme for which it is eligible for exemption, apart from the period of concession. That certificate shows that the petitioner is entitled to exemption in terms of Ext.P1 G.O. for 5 years, from 27.3.1993 to 26.3.1998. That benefit flowing out of

Ext.P1 Government Order would depend upon the fact situations required therein being satisfied. However, Ext.P3 was issued by the Director of Industries & Commerce only on 15.10.1997 and shown to be received by the third respondent, Special Officer (Revenue) of K.S.E.Board only on 16.10.1997, though the petitioner has a case that third respondent had refused to receive the original of Ext.P3 when it was offered in person on 15.10.1997 itself.

2. Ext.P1 was issued by the Government through its Power Department as a measure of incentive by extending concessional power tariff and electricity duty to industries. That is an exercise relatable to Governmental function and the Board is obliged to act on it. Ext.P1 does not fix any particular cut off date for applying to enjoy the benefit thereof. So much so, when the Director of Industries & Commerce has certified on 15.10.1997, it is apparently unreasonable to insist that such certificate can be acted upon only if it reaches the hands of the third respondent Special Officer (Revenue) of the Board on that day itself. Not only that, as I have already noticed, it is the

uncontroverted contention of the petitioner that he had made the original of Ext.P3 available to the third respondent on 15.10.1997 itself, while the third respondent failed to receive it. I am inclined to accept that pleading alleged in para 4 of the writ petition in the absence of any controversy regarding the same.

For the foregoing reasons, this writ petition is allowed quashing Exts.P5 and P8 and directing the respondents to provide the petitioner the benefit of concessional tariff as per Ext.P1 Government Order and to issue a certificate quantifying the amount paid by the petitioner during the period 27.3.1993 to 26.3.1998, in excess of the concessional tariff granted as per Ext.P1 order. The petitioner would be entitled to refund of all such amounts and the respondents are directed to adjust such amounts towards future bills. The claim for interest and costs is refused.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.23020 OF 1999

JUDGMENT

22nd OCTOBER, 2007.

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